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REMARKS

Claims 1 through 23, 25 and 26 are pending in this Application. Claim 1 has been amended and claim 24 cancelled. Care has been exercised to avoid the introduction of new matter. Indeed, adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, Fig. 4 and the related discussion thereof in the written description of the specification. Applicants submit that the present Amendment does not generate any new matter issue.

Applicants acknowledge, with appreciation, Examiner Nguyen's courtesy and professionalism in conducting a telephonic interview on November 18, 2004. During the interview, it was agreed that the present amendment to claim 1 would overcome the imposed rejection of claim 1 and the claims dependent thereon. For completeness Applicants will address each rejection.

Claims 1, 2, 4 and 5 were rejected under 35 U.S.C. § 102 for lack of novelty as evidenced by Chooi et al.

In the statement of the rejection, the Examiner referred to Figs. 1 and 4 through 8, and the related text, asserting the disclosure of a method corresponding to that claimed, including the step of forming a second barrier layer on an entire upper surface of the first barrier layer noting barrier layer 15 in Fig. 5. This rejection is traversed.

For reasons argued in the responsive Amendment submitted September 14, 2004, in the method disclosed by Chooi et al., the second barrier layer is **not** formed **on an entire** upper surface of the first barrier layer because of the presence of element 18 which prevents the second barrier layer 15 from being deposited on the entire upper surface of the first barrier layer 16 (Fig. 5).

The Examiner has apparently interpreted the word "on" to mean over. But that is not how the word "on" is employed in the claimed invention and as how it would have been understood by one having ordinary skill in the art in the **context** of the claimed invention, noting Fig. 4. It is well settled that claims are to be interpreted **not** by a litmus test, but by how one having ordinary skill in the art would have interpreted particular claim language in the **context** of the entire disclosure. *Metabolite Laboratories Inc. v. Laboratory Corp. of America Holdings, ____ F3d. ____ 71 USPQ2d 1081 (Fed.Cir. 2004).*

At any rate, inconsistent with the Examiner's courteous suggestion during the November 18, 2004 telephonic interview, claim 1 has been amended to clarify that the first barrier material is formed on and in direct contact with an entire upper surface of the first barrier layer. Clearly, and as acknowledged by the Examiner, Chooi et al. neither disclose nor suggest such a step. In fact, as argued in the responsive Amendment submitted September 14, 2004, in the methodology of Chooi et al., it is impossible to form the second identified barrier layer 15 to be formed on and in direct contact with an entire upper surface of the first barrier layer 16 because element 18 is formed on most of the upper surface of the first barrier layer 16.

The above argued difference in manipulative steps between the claimed method and the methodology of Chooi et al undermines the factual determination that Chooi et al. disclose a method identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc., 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986).* Applicants, therefore submit that the imposed rejection of claims 1, 2, 4 and 5 under 35 U.S.C. § 102 for lack of novelty as evidenced by Chooi et al. is not factually viable and, hence solicit withdrawal thereof.

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Claims 24 through 26 were rejected under 35 U.S.C. § 102 for lack of novelty as evidenced by Chooi et al. This rejection is traversed.

Initially, this rejection has been rendered moot as to claim 24, because claim 24 has been cancelled.

Claims 25 and 26 depend from independent claim 1. Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as evidenced by Chooi et al. The Examiner's additional exposition of Chooi et al. does not cure the previously argued deficiencies of Chooi et al. with respect to independent claim 1.

Applicants, therefore, submit that the imposed rejection of claims 24 through 26 under 35 U.S.C. § 102 for lack of novelty as evidenced by Chooi et al. is not factually viable and, hence, solicit withdrawal thereof.

Claim 3 was rejected under 35 U.S.C. § 103 for obviousness predicated upon Chooi et al. in view of Chung et al.

This rejection is traversed. Specifically, claim 3 depends from independent claim 1. Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as evidenced by Chooi et al. The additional reference to Chung et al. does not cure the argued deficiencies of Chooi et al. Accordingly, even if the applied references are combined as suggested by the Examiner, and Applicants do not agree that the requisite fact-based motivation has been established, the claimed invention will not result. *Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988).*

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Applicants, therefore submit that the imposed rejection of claim 3 under 35 U.S.C. § 103 for obviousness predicated upon Chooi et al in view of Chung et al. is not factually or legally viable and, hence, solicit withdrawal thereof.

Applicants acknowledge, with appreciation, the Examiner's allowance of claims 6 through 12. Based upon the arguments submitted *supra*, Applicants submit that the imposed rejections have been overcome an that all active claims are in condition for immediate allowance. Favorable consideration is, therefore, respectfully solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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